



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Torromeo Trucking Company, Inc.
33 Old Ferry Road
PO Box 2308
Methuen, MA 01844

Re: Mason's Crossing Subdivision,
Freemont, NH

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
No. AF 02-014**

March 27, 2002

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("the Division") to Torromeo Trucking Company, Inc., pursuant to RSA 485-A:17 and Env-C 603.02. The Division is proposing that fines totaling \$12,500 be imposed against Torromeo Trucking Company, Inc. for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Water Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Torromeo Trucking Company, Inc. ("Torromeo") is a corporation registered to do business in New Hampshire having a mailing address of PO Box 2308, Methuen, MA 01844.

III. Summary of Facts and Law Supporting Claim(s)

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
2. Pursuant to RSA 485-A:22, V, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of, *inter alia*, RSA 485-A:17, Env-Ws 415, or any permit issued pursuant thereto. Pursuant to RSA 485-A:22, V, the Commissioner has adopted Env-C 603 to establish the schedule of fines for such violations.
3. Pursuant to RSA 482-A:13, DES regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any surface waters of the state. Pursuant to RSA 482-A:11, I, DES has adopted Wt 100 *et seq.* to implement this program.
4. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities

regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.

5. Pursuant to RSA 482-A:13, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of RSA 482-A:13, or any permit issued pursuant thereto. Pursuant to RSA 482-A:14, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.

6. Env-Ws 415.02(y) defines "to significantly alter the characteristics of terrain" to include disturbing more than 100,000 sq. ft. of contiguous area.

7. Env-Ws 415.09(i) and (k) require temporary and permanent methods for preventing soil erosion and controlling runoff to be employed during earth moving activities.

8. Env-Ws 415.09(j) requires construction phasing and sequencing be implemented during earth moving activities, including methods for limiting the length of time unstabilized soils are exposed

9. Torromeo is the owner of property located off North Road in Fremont, New Hampshire, more particularly identified on Town of Fremont Tax Map 6 as Lot 62 (the "Property").

10. On November 7, 2000 DES personnel conducted an inspection of the Property, and reviewed documents on file with DES. As a result of the field inspection and review of DES files, the following has been documented:

a) Site Specific Permit WPF-4594 (the "Site Specific Permit") was issued to the previous owner of the Property, Harold Sherman, for development of a 97-acre parcel into a 27-lot residential subdivision, known as Mason's Corner Subdivision.

b) The Site Specific Permit expired on May 3, 1998

c) On January 3, 1997, DES issued wetlands permit number 1996-0220 (the "Wetlands Permit") to Harold Sherman for roadway crossings and one driveway crossing for a 27-lot subdivision.

d) The Wetlands Permit was not transferred to Torromeo from Mr. Sherman, and expired on January 3, 1999.

e) Culverts were not constructed with proper headwalls, as required by the Wetlands Permit. Inadequate culverts include those at the following approximate locations: stations 13 + 00, 32 + 00, and 47 + 00 on Karlin Road.

f) Proper erosion/siltation control measures were not in place or had not been maintained on unstabilized areas of the Property, as required by the Site Specific Permit.

g) Permanent stormwater drainage systems were not stabilized prior to paving of road surfaces and prior to directing flow to the drainage systems, as required by the Site Specific Permit.

h) The slope between stations 10 + 00 and 11 + 00 on Karlin Road had not been stabilized as required by the Site Specific Permit. The silt fence between stations 10 + 00 and 11 + 00 had failed.

i) The culvert at station 34 + 00 on Karlin Road was half filled with sediment

j) Approximately 800 sq. ft. of fill was observed in the wetlands between stations 40 + 00 and 44 + 00 on Karlin Road.

k) The roadside ditches between stations 44 + 00 and 47 + 00 on Karlin Road were not stable for the full length of the ditches.

11. A Letter of Deficiency WD WQE 00-21 ("LOD") was issued to Henry Torromeo on December 11, 2000. The LOD requested that Torromeo complete the following:

a) Transfer the Wetlands Permit within 10 days of the LOD

b) Submit a Site Specific application within 30 days of the LOD.

c) Install a silt fence at the edge of the forested wetland on Lot 62-12-23 (property of Richard Washburn) to prevent further sedimentation from the eroding slope to enter wetlands. Place mulch on the slope immediately to stabilize. In spring, the slope should be backdragged, seeded and mulched.

d) Mulch the slopes at the intersection of Karlin Road and Round Robin Loop, and install silt fence at the toe of the slope within 10 days of the LOD.

e) Install proper headwalls at the inlets and outlets of all culverts on the Property within 20 days of the LOD.

f) Install silt fence around the stockpile of material at the cul-de-sac on Round Robin Loop within 10 days of the LOD.

g) Place mulch on the slope between stations 10 + 00 and 11 + 00 on Karlin Road to stabilize it within 10 days of the LOD. Seed and mulch slope in the spring. Install silt fence at the toe of slope.

h) Remove sediment from the culvert at station 34 + 00 on Karlin Road within 10 days of the LOD.

i) Remove silt fence in the wetlands between stations 40 + 00 and 44 + 00 on Karlin Road

j) Place mulch on roadside ditches between stations 44 + 00 and 47 + 00 on Karlin Road to stabilize within 10 days of the LOD. Seed and mulch in the spring.

12. On February 13, 2001, DES personnel spoke with Vincent Iacozzi of Torromeo regarding deficiencies noted on the LOD. Mr. Iacozzi stated that the deficiencies had been corrected with

the exception of the issue on Lot 62-12-23, which he stated had been caused by actions of the property owner, Mr. Washburn. Mr. Iacozzi further stated that "as-built" plans would be submitted to the Site Specific program by their engineers within a 2 week time frame.

13. On May 10, 2001, DES personnel inspected the Property and determined that Torromeo had not complied with any of the items requested in the LOD, except that the stockpile of material at the cul-de-sac on Round Robin Loop [item 11(f)] had been removed.

14. On September 20, 2001, DES personnel inspected the Property and found that Torromeo still had not complied with any of the items requested in the LOD, with the exception of item 11(f), and that sediment had migrated from unstabilized areas on Round Robin Loop and the intersection of Karlin Road onto the road surface.

IV. Violations Alleged and Proposed Administrative Fines

1. Torromeo has violated NH RSA 485-A:17 by significantly altering terrain without a permit from DES. For this violation, Env-C 603.02 (i)(1) specifies a fine of \$3,000.
2. Torromeo has violated NH RSA 485-A:17 and Env Ws 415.09(i) by failing to install or maintain erosion control measures on Karlin Road between stations 10 + 00 and 11 + 00, adjacent to the culvert at station 34 + 00, and between stations 44 + 00 and 47 + 00. For this violation, Env-C 603.02 (i)(1) specifies a fine of \$3,000.
3. Torromeo has violated RSA 485-A:17 and Env Ws 415.09(j) by failing to stabilize exposed soils. For this violation, Env-C 603.02 (i)(1) specifies a fine of \$1,000.
4. Torromeo has violated NH RSA 482-A:3, I, by failing to construct proper headwalls on three 3) culverts on the Property. For this violation, Env-C 614.05 (m) specifies a fine of \$6,000.
5. Torromeo has violated NH RSA 482-A:3, I, by placing fill (i.e., a silt fence) in wetlands without a permit from DES. For this violation, Env-C 614.02 (b) (1) specifies a fine of \$500.
6. Torromeo has violated NH RSA 482-A:3, I, by placing less than 3,000 square feet of fill in wetlands without a permit from DES. For this violation, Env-C 614.02 (b) (1) specifies a fine of \$500.

The total fine being sought is \$12,500.

V. Required Response, Opportunity for Hearing

Pursuant to Env-C 601.06, you are required to respond to this notice. Please respond no later than April 29, 2002 using the enclosed colored form.

1. If Torromeo would like to have a hearing, please sign the appearance section of the colored form and return it to James Ballentine, DES Enforcement Paralegal, as noted on the form. A Notice of Scheduled Hearing will be issued.

2. If Torromeo chooses to waive the hearing and pay the proposed fine, please have the authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If Torromeo wishes to discuss the possibility of settling the case, please have the authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Torromeo's interest in settling.

Torromeo is not required to be represented by an attorney. If Torromeo chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

VI. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Torromeo committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Torromeo committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Torromeo proves, by a preponderance of the evidence, applies in this case:**

The violation was a one-time or non-continuing violation, **and** Torromeo did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Torromeo did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Torromeo was making a good faith effort to comply with the requirement that was violated.
3. Torromeo has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Torromeo's case which was not known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

An administrative fine hearing is a formal hearing. Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Torromeo committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is Torromeo's opportunity to present testimony and evidence that Torromeo did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If Torromeo has any evidence, such as photographs, business records or other documents, that Torromeo believes show that Torromeo did not commit the violation(s) or that otherwise support Torromeo's position, Torromeo should bring the evidence to the hearing. Torromeo may also bring witnesses (other people) to the hearing to testify on Torromeo's behalf.

If Torromeo wishes to have an informal meeting to discuss the issues, Torromeo must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Torromeo has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY
Harry T. Stewart, P.E., Director
Water Division

Enclosure (*NHDES Fact Sheet #CO-2001*),

cc: Gretchen Rule, DES Legal Unit
Charles Knox, DES PIP Office
Mary Ann Tilton, WET/WD/DES
Ana Ford, WQ/WD/DES
Rockingham County Registry of Deeds
Fremont Planning Board
Fremont Conservation Commission